

**CORPORATIONS ACT 2001 (Cth).**  
**A Public Company Limited by Guarantee and**  
**not Having a Share Capital**

**CONSTITUTION**  
**of**  
**THE NEW SOUTH WALES**  
**BAR ASSOCIATION**  
**ACN 000 033 652**

**Incorporates amendments to 13 November 2009**

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**CORPORATIONS ACT**

A Public Company Limited by Guarantee and not having a Share Capital

**CONSTITUTION**

**of**

**THE NEW SOUTH WALES BAR ASSOCIATION**

**1. PRELIMINARY**

**1.1 Dictionary**

When used in this Constitution the following terms shall have the following meanings unless the context or subject matter otherwise requires:

**Act** means the New South Wales Legal Profession Act 2004;

**Bar Association** means The New South Wales Bar Association;

**Bar Council** means the Council of the Bar Association elected pursuant to this Constitution;

**Business Day** means any day except a public holiday throughout New South Wales or a Saturday or Sunday;

**Constitution** means this Constitution for the time being of the Bar Association;

**Corporations Act** means the *Corporations Act 2001* (Cth);

**Councillor** means a member of the Bar Council;

**Election Ballot Paper** means the ballot paper prepared by the Returning Officer for the election of the Councillors in the prescribed form and in accordance with this Constitution;

**Executive Director** means the person appointed by the Bar Council as the Executive Director under this Constitution;

**Financial Year** means the period of 12 months commencing on 1 July and ending on the following 30 June, or such other period as the Bar Council may determine from time to time;

**General Meeting** means a general meeting of the Bar Association or of Members;

**Legal Practitioner** means a person other than a Local Practising Barrister having a right to practise law as a solicitor, barrister or solicitor and barrister in Australia or in any other country;

**Local Practising Barrister** means a person who holds a current practising certificate as a barrister issued under the Act;

**Member** means a person whose name is entered in the Register;

**Members of the Outer Bar** means Local Practising Barristers who are not Senior Counsel;

**Membership Financial Year** means the membership financial year of the Bar Association, from 1 July to 30 June;

**Non-Practising Legal Practitioner** means a person who at any time has been but is no longer a Legal Practitioner or Local Practising Barrister and includes a person who is or has been engaged in teaching law;

**Office** means the registered office for the time being of the Bar Association;

**Officer** means an officer of the Bar Association within the meaning of the Corporations Act;

**Office Bearer** means a person holding the office of President, Senior Vice-President, Junior Vice-President, Treasurer, or Honorary Secretary;

**Ordinary Member** means a Member who has been admitted to the Bar Association as an Ordinary Member in accordance with this Constitution;

**Ordinary Resolution** means a resolution of a General Meeting other than a special resolution;

**Polling Officers** means the persons appointed by the Bar Council as the Polling Officers under this Constitution;

**Practice Date** means in relation to a Local Practising Barrister the date of the most recent practising certificate granted by the Bar Council under the Act (not being an annual renewal of that certificate) unless otherwise determined by the Bar Council.

**President** means the person for the time being holding that office in accordance with this Constitution;

**Register** means the register of Members kept as required by the Corporations Act and this Constitution;

**Related Body Corporate** has the meaning expressed in section 50 of the Corporations Act;

**Returning Officer** means the person appointed by the Bar Council as the Returning Officer under this Constitution;

**Secretary** means the person appointed by the Bar Council as Secretary of the Bar Association under this Constitution;

**Senior Counsel** means any Local Practising Barrister appointed and designated as Senior Counsel by the President (including any past President) or who has received a commission as Queen's Counsel;

**Treasurer** means the person for the time being holding that office in accordance with this Constitution.

**1.2 Interpretation**

In this Constitution, unless the context otherwise requires:

- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 the singular includes the plural and the converse;
- 1.2.3 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.2.4 a reference to a person, body politic, corporation, trust, partnership, unincorporated body, a statutory authority or other entity includes any of the foregoing;
- 1.2.5 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 1.2.6 a reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- 1.2.7 a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- 1.2.8 a reference to an act, matter or thing done under the Act includes a reference to that act, matter or thing as affirmed, varied or substituted by any legislative body having power to review decisions made by the Bar Association or Bar Council under the Act;
- 1.2.9 in a provision of this Constitution that deals with a matter dealt with by the Corporations Act, an expression has the same meaning as in the Corporations Act, except so far as the contrary intention appears.

**2. APPLICATION OF CORPORATIONS ACT**

- 2.1 This Constitution is to be interpreted subject to the Corporations Act. However, the rules that apply as replaceable rules to companies under the Corporations Act do not apply to the Bar Association.

**3. STATEMENT OF OBJECTS**

- 3.1 The objects of the NSW Bar Association are:
  - 3.1.1 to promote the administration of justice;
  - 3.1.2 to promote, maintain and improve the interests and standards of Local Practising Barristers;
  - 3.1.3 to make recommendations with respect to legislation, law reform, Rules of Court and the business and procedure of Courts;
  - 3.1.4 to seek to ensure that the benefits of the administration of justice are reasonably and equally available to all members of the community;
  - 3.1.5 to arrange and promote continuing legal education;
  - 3.1.6 to promote fair and honourable practice amongst barristers; to suppress, discourage and prevent malpractice and professional misconduct; to inquire into so far as the law permits and decide questions as to professional conduct and etiquette of barristers; to make rules (including rules for the imposition on members of penalties, including expulsion, suspension or fines), with regard to the foregoing to the extent the law permits and in the absence of other rules and regulations made under the Act for breach of such rules; and if deemed necessary, to report any of such rules or decisions to

the Supreme Court of New South Wales and to the Members of the Bar Association and to the public as the Bar Council sees fit;

- 3.1.7 to exercise such powers as may be conferred upon the Bar Association by statute, Rules of Court or otherwise;
- 3.1.8 to confer and when thought fit to cooperate with the Law Society of New South Wales, with bodies in Australia or elsewhere representing the profession of the law or any branch thereof, or with any other bodies in Australia or elsewhere, as to matters directly or indirectly affecting the profession of the law, or which may affect the Bar Association or its members, or may affect the attainment of the objects of Bar Association; and to form and maintain associations with the Law Council of Australia, the Australian Bar Association, or any other body in Australia or elsewhere whether or not connected with the profession of the law in the discretion of the Bar Council;
- 3.1.9 to acquire, establish, conduct and maintain lecture rooms, libraries, reading, meeting, dining and other rooms and buildings, including premises licensed under the Liquor Act, 1982, as amended, for the use of members of the Bar Association, and to acquire and provide facilities and equipment of all kinds to encourage and promote the use and enjoyment of such rooms and buildings;
- 3.1.10 for reward or otherwise, to consider, undertake and deal with law reporting, law printing and publishing and law book binding, and to publish books, journals, papers, or other documents if in the opinion of the Bar Council from time to time it is conducive to the purposes of the Bar Association to do so;
- 3.1.11 to promote or conduct or cooperate in the promotion or conduct of activities of a professional, educational, cultural, sporting and social nature amongst Members of the Bar Association;
- 3.1.12 to purchase, take on lease, hire or otherwise acquire any real or personal property and any right or privilege necessary or convenient for the objects of the Bar Association and to build, erect, acquire or alter any buildings or chambers for the objects of the Bar Association or its members;
- 3.1.13 to sell, lease, lend, improve, manage, mortgage, charge or otherwise deal with all or any part of the property of the Bar Association;
- 3.1.14 to assist members or ex-members of the Bar Association, or the spouses, widows, widowers, children or other dependents of such members or ex-members or of deceased members of the Bar Association who are in need and deserving of assistance, and to assist or promote or take over any organisation having for its object financial assistance to such persons or any of them;
- 3.1.15 to make donations to charities and such other objects in the public interest as determined from time to time by the Bar Council as it sees fit;
- 3.1.16 to borrow and raise money for the objects of the Bar Association and to secure the repayment thereof in such manner as may be determined and for this purpose to mortgage or charge all or any part of the property of the Bar Association including the amount of liability of the members of the Bar Association for the time being in the event of the Bar Association being wound up;
- 3.1.17 to invest the moneys of the Bar Association not immediately required upon such securities as may from time to time be determined;
- 3.1.18 to conduct superannuation funds and in furtherance of the objects of the Bar Association to buy, sell and deal in all kinds of apparatus and all kinds of provisions liquid or solid required by the members of the Bar Association or their guests whenever in the opinion of the Bar Council it is beneficial to the Bar Association or its members so to do, and generally to assist and further the interests of the Bar Association financially or otherwise;
- 3.1.19 generally to do all such things as may in the opinion of the Bar Council be of benefit to Local Practising Barristers; and

3.1.20 to do all such things as are incidental or conducive to the attainment of the above objects or any of them.

#### **4. MEMBERSHIP**

##### **4.1 Types of Membership**

A person admitted as a Member shall be admitted as an:

- (a) Ordinary Member - Class A or Class B; or
- (b) Life Member.

##### **4.2 Ordinary Members - Class A**

4.2.1 Class A is divided into the following parts:

- (a) Part I: Local Practising Barristers; and
- (b) Part II: Members who were Ordinary Members - Class A immediately prior to the adoption of this Constitution and who do not fall within Part I. The qualification of a Member under this Part II ceases upon cessation of membership as an Ordinary Member - Class A under this Constitution.

4.2.2 In addition to any other rights conferred upon Ordinary Members by this Constitution, Ordinary Members - Class A have the right to:

- (a) be nominated for election to the Bar Council;
- (b) nominate a Member for election to the Bar Council; and
- (c) vote at an election of the Bar Council.

##### **4.3 Ordinary Members - Class B**

4.3.1 Class B is divided into the following parts:

- (a) Part I: Legal Practitioners;
- (b) Part II: Non-Practising Legal Practitioners; and
- (c) Part III: Such other persons as the Bar Council may from time to time determine either individually or as a group.

4.3.2 Ordinary Members - Class B have the same rights as Ordinary Members - Class A except the rights set out in rule 4.2.2.

##### **4.4 Life Members**

4.4.1 Persons eligible to become a Life Member are those Members who in the opinion of the Bar Council have given exceptional service to the Bar Association or to the profession of the law.

4.4.2 Life Members have the rights of an Ordinary Member - Class A.

##### **4.5 Transitional Provisions**

4.5.1 A person who, immediately before the adoption of this Constitution, was an Ordinary Member - Class A becomes on adoption of this Constitution an Ordinary Member - Class A in whichever part of that Class for which they qualify.

- 4.5.2 A person who, immediately before the adoption of this Constitution, was an Ordinary Member - Class B or Class C becomes on adoption of this Constitution an Ordinary Member – Class B in whichever part of that Class for which they qualify.
- 4.5.3 A person who, immediately before the adoption of this Constitution, was a Life Member shall continue to have the same status of membership on adoption of this Constitution.

#### **4.6 Rights of Members**

Notwithstanding anything in this Constitution, if at any time the number of Ordinary Members - Class A and Life Members does not comprise a majority of the membership of the Bar Association, then all Ordinary Members shall have the rights of Ordinary Members - Class A set out in rule 4.2.2(c) for as long as the number of Ordinary Members - Class A and Life Members does not comprise that majority.

#### **4.7 Register**

- 4.7.1 The Bar Association will keep and maintain:
- a Register of Ordinary Members and Life Members.
- 4.7.2 The Register of Ordinary Members and Life Members shall include the Member's name, address, the date on which the entry of the Member's name in the Register is made and class of membership.
- Note under s 169 of the Corporations Act the register of members must include the members name and address and the date on which the entry of the member's name in the register is made. An up to date index of members' names must also be kept. The register must also show the details of each person who stopped being a member within the last 7 years and the date on which they stopped being a member.
- 4.7.3 The Register may be kept in electronic form.
- 4.7.4 A person whose name was on the Register as at the date of the adoption of this Constitution is a Member.
- 4.7.5 The book, document or electronic format in which the Members were recorded immediately prior to the date of this Constitution shall become the Register.

#### **4.8 Membership Class**

- 4.8.1 An Ordinary Member – Class A who ceases to be a Local Practising Barrister will, unless the Member resigns from membership or unless the Bar Council determines otherwise in accordance with rule 4.8.2, automatically become an Ordinary Member – Class B provided the Member qualifies for that class of membership.
- 4.8.2 Subject to this Constitution, the Bar Council, in its discretion, shall determine the class or part of class of the Register in which the name of each Member shall be included and it may so determine at any time and from time to time, either on the application of the Member concerned, or of its own motion.

#### **4.9 Responsibility for Association property**

If a Member damages or loses any property of the Bar Association, the Member shall make good the damage or loss to the satisfaction of the Bar Council. If any other person, not being a Member, damages or loses any property of the Bar Association as a consequence of his or her introduction into its premises by a Member, that Member shall make good the damage or loss to the satisfaction of the Bar Council.

#### **4.10 Membership not transferable**

Membership of the Bar Association is personal and is not transferable.

## **5 ADMISSION TO MEMBERSHIP**

### **5.1 Admission procedure**

- 5.1.1 Every application for membership shall be in the form prescribed by the Bar Council.
- 5.1.2 A person shall not be admitted as a Member unless the person is elected to membership at a duly convened meeting of the Bar Council.
- 5.1.3 The Bar Council shall have full discretion whether to admit any eligible person as a Member.
- 5.1.4 The Bar Council shall not admit a person as an Ordinary Member - Class A unless:
- (a) it is satisfied that the person:
    - (i) intends to practise law in the State of New South Wales only as a barrister and not as a solicitor or a solicitor and barrister;
    - (ii) does not intend to carry on, engage in or practise any business, profession or occupation that is inconsistent with practice as a barrister;
    - (iii) does not intend to practise as a barrister in partnership with any person or as an employee of any person;
    - (iv) does not intend to share profits from practice as a barrister with any other person;
  - (b) it has obtained from the person such undertakings as are required by any regulations made pursuant to this Constitution; and
  - (c) it is satisfied that the person is a fit and proper person to practise as a barrister.
- 5.1.5 A Member remains a Member until membership is terminated in accordance with this Constitution.

## **6 MEMBERSHIP FEES**

### **6.1 Annual membership fees**

- 6.1.1 Subject to the Act, the Bar Council shall set annual membership fees to be paid by Members. Different rates may apply to different parts and classes of membership and within those parts.
- 6.1.2 Annual membership fees are payable in full annually in advance in respect of each Membership Financial Year on the first day of the Membership Financial Year. Payment may be made within one month of the due date (or such other date as the Bar Council may from time to time determine) without prejudice to any rights of the Member.
- 6.1.3 The Bar Council may exempt any Member or Membership class or part of a class from the requirement to pay any membership fee.
- 6.1.4 Life Members shall not pay any membership fees.

### **6.2 Failure to pay annual membership fee**

- 6.2.1 Members whose membership fee or any other amount payable to the Bar Association is more than two months in arrears shall not be entitled to vote at any General Meeting or in any election of Members of the Bar Council or be eligible to be elected, or nominate a Member for election, to the Bar Council.
- 6.2.2 If any Member has failed to pay a membership fee or any other amount payable to the Bar Association for a period of two months after it became payable, the Secretary may serve upon that Member a notice

signed by the Secretary requiring the Member to pay the annual membership fee or other amount payable within 14 days of the date of the notice or such other time as may be specified in the notice.

- 6.2.3 The Secretary may by notice in writing given to the Member concerned extend the time for compliance with a notice pursuant to rule 6.2.2 for such time and on such conditions (if any) as the Secretary thinks fit.

### **6.3 No refund of membership fees**

- 6.3.1 Termination of membership does not entitle a person to any refund of all or part of any membership fee, unless the Bar Council determines otherwise.
- 6.3.2 A Member who changes membership division during a Membership Financial Year is not entitled to any refund of all or part of any membership fees paid for that Membership Financial Year, unless the Bar Council determines otherwise.

## **7 CESSATION OF MEMBERSHIP**

### **7.1 Resignation**

- 7.1.1 Subject to this Constitution, a Member may resign from membership by notice in writing to the Secretary.
- 7.1.2 Upon receipt of the resignation notice, the Member's name may be removed from the Register by the Secretary and the Secretary shall record in the Register that the removal of the Member's name was made at the request of the Member.
- 7.1.3 The name of a Member who dies shall be removed from the Register and the Secretary shall record in the Register that the Member has died.

### **7.2 Termination of membership by resolution of Bar Council or Members**

- 7.2.1 Subject to this Constitution, the Bar Council or Members in General Meeting may at any time terminate the membership of a Member if the Member:
- (a) ceases to qualify for admission to membership of the Bar Association;
  - (b) refuses or neglects to comply with the provisions of this Constitution or any applicable rules made by the Bar Council;
  - (c) engages in conduct which in the opinion of the Bar Council is unbecoming of the Member or prejudicial to the interests or reputation of the Bar Association; or
  - (d) fails to pay any debt due to the Bar Association for a period of three months after the due date for payment.
- 7.2.2 The name of any person ceasing to be a Member shall be removed from the Register.

### **7.3 Continuing obligations**

- 7.3.1 Termination of membership for any reason does not affect the liabilities and obligations of a Member (whether they arise under this Constitution or otherwise) existing at the date of termination or which arise or crystallise after that date out of or by reason of facts or circumstances occurring or in existence at or before that date.
- 7.3.2 Without limiting the previous rule, termination of membership does not relieve a Member from any obligation to pay any membership fees payable on or before the date of termination.

## **8 GENERAL MEETINGS**

### **8.1 Calling General Meetings**

8.1.1 The Bar Council may, whenever it thinks fit, call a General Meeting and must convene and arrange to hold a General Meeting when requisitioned by Members in accordance with the Corporations Act.

8.1.2 In relation to Annual General Meetings:

- (a) the Bar Council shall in each calendar year call an Annual General Meeting to be held in addition to any other meetings in that year; and
- (b) an Annual General Meeting must be held within five months after the end of the Bar Association's Financial Year.

### **8.2 Notice of General Meetings**

8.2.1 Subject to the Corporations Act, at least 42 days notice of a General Meeting, must be given to all Members.

8.2.2 A notice of a General Meeting shall specify:

- (a) the date, time and place of the meeting;
- (b) the general nature of the business to be transacted at the meeting;
- (c) any other matters required by the Corporations Act.

8.2.3 It is not necessary for a notice of an Annual General Meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial report, the reports of the Bar Council and the auditors, the appointment of the auditor or the fixing of the auditor's remuneration.

8.2.4 A person may waive notice of any General Meeting by notice in writing to the Bar Association.

8.2.5 The non-receipt of notice of a General Meeting by, or a failure to give notice of a General Meeting to, any person entitled to receive notice of a General Meeting under rule 8.2.1 does not invalidate any act, matter or thing done or resolution passed at the General Meeting if:

- (a) the non-receipt or failure occurred by accident or error; or
- (b) before or after the meeting, the person:
  - (i) waives notice of that meeting under rule 8.2.4; or
  - (ii) notifies the Bar Association of the person's agreement to that act, matter, thing or resolution by notice in writing to the Bar Association.

8.2.6 A person's attendance at a General Meeting:

- (a) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
- (b) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 8.2.3, unless the person objects to considering the matter when it is presented.

### **8.3 Cancelling, Postponing and Adjourning General Meetings**

8.3.1 The Bar Council may, by notice to everyone entitled to notice of the meeting:

- (a) postpone an Annual General Meeting, or a General Meeting called by the Bar Council as required by section 249D of the Corporations Act, but not so as to contravene the Corporations Act; and
- (b) postpone or cancel any other General Meeting called by the Bar Council.

8.3.2 The person chairing a General Meeting at which a quorum is present:

- (a) may adjourn the meeting with the consent of the meeting by Ordinary Resolution; and
- (b) must adjourn the meeting if directed by Ordinary Resolution.

8.3.3 The only business that an adjourned General Meeting may deal with is business unfinished at the General Meeting that was adjourned.

Note 1 This rule replaces s 249W(2) of the Corporations Act

8.3.4 Notice of an adjourned meeting must be given to Members if the adjournment is for more than one month.

## **9 PROCEDURE AT A GENERAL MEETING**

### **9.1 Quorum at a General Meeting**

- 9.1.1 Business must not be transacted at a General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business and while business is being conducted.
- 9.1.2 Except as otherwise set out in this Constitution, 25 Ordinary Members - Class A present in person and entitled to vote at a General Meeting is a quorum.
- 9.1.3 If a quorum is not present within 15 minutes of the time appointed for a General Meeting, or a longer period allowed by the Chair, the meeting shall stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Chair.
- 9.1.4 If a quorum is not present at an adjourned meeting within 15 minutes of the time appointed for it to start, the Members present shall be a quorum provided there are 20 or more Ordinary Members present.

### **9.2 Chair of General Meeting**

9.2.1 A General Meeting shall be chaired by:

- (a) the President of the Bar Council;
- (b) if the President is not present within 15 minutes after the scheduled commencement of the meeting, or is unable or unwilling to act, the Senior Vice-President;
- (c) if the President and Senior Vice-President are absent or unable or unwilling to act, the Junior Vice-President; or
- (d) if the President, Senior Vice-President and Junior Vice-President are absent or unable or unwilling to act, an Ordinary Member - Class A elected by the Ordinary Members - Class A present.

9.2.2 Subject to this Constitution, the Chair's ruling on all matters relating to the order of business and the procedure and conduct of a General Meeting (including any poll or ballot) is final and no motion of dissent from a ruling of the Chair may be moved.

### **9.3 Voting at General Meetings**

- 9.3.1 At a General Meeting a resolution put to the vote of the meeting is decided on a show of hands unless a ballot is demanded before or on the declaration of the result of the show of hands.
- 9.3.2 Subject to this Constitution, every Ordinary Member - Class A present in person has one vote on a show of hands and every Ordinary Member - Class A present in person has one vote on a ballot.
- 9.3.3 If there is an equality of votes whether on a show of hands or on a ballot, the Chair has a casting vote in addition to the Chair's deliberative vote as a Member.
- 9.3.4 An objection to the qualification of a voter must be referred to the Chair who must rule on the objection before a vote is taken.
- 9.3.5 If a ballot is not duly demanded, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the General Meetings of Members, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **9.4 Conduct of a ballot at General Meetings**

- 9.4.1 A ballot may not be taken on the election of a Chair or on a question of adjournment.
- 9.4.2 A ballot may be demanded by:
- (a) the Chair; or
  - (b) any five Ordinary Members - Class A present in person and entitled to vote.
- 9.4.3 The demand for a ballot may be withdrawn.
- 9.4.4 The demand for a ballot does not prevent the continuance of a meeting for the transaction of business other than the question on which the ballot is demanded.
- 9.4.5 If a ballot is duly demanded, it must be taken in the manner and at such time as the Chair directs.
- 9.4.6 The result of the ballot is the resolution of the meeting on the question concerned.

### **9.5 Proxies at General Meetings**

- 9.5.1 A Member who is entitled to attend and to vote at a general meeting of the Bar Association may appoint a person as proxy to attend, speak and vote for that Member.
- 9.5.2 A proxy may be, but does not have to be, a Member.
- 9.5.3 A proxy is not entitled to vote on a show of hands.
- 9.5.4 A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.
- 9.5.5 An instrument appointing a proxy is valid if it is in accordance with the Corporations Act or in any form approved by the Bar Council.
- 9.5.6 Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Bar Association.

- 9.5.7 An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- (a) An instrument purporting to appoint a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Bar Association at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting. An instrument is received by the Bar Association under this rule when it is received in accordance with the Corporations Act, and to the extent permitted by the Corporations Act, if the instrument is produced or the transmission of the instrument is otherwise verified to the Bar Association in the way specified in the notice.
- 9.5.8 A proxy may demand, or join in demanding, a poll in accordance with this Constitution.
- 9.5.9 The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Bar Association from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.
- 9.5.10 A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:
- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
- i. the revocation of the instrument appointing the proxy;
  - ii. the appointment of a new proxy; or
  - iii. the revocation of any power of attorney under which the proxy was appointed.

## **10 BAR COUNCIL**

### **10.1 Bar Association to have a Bar Council**

There shall be a council of Members called the Bar Council constituted as provided for in this Constitution.

### **10.2 Composition of the Bar Council**

- 10.2.1 The Bar Council shall consist of 21 Ordinary Members - Class A who are elected pursuant to this Constitution:
- (a) five of whom shall be Senior Counsel;
- (b) three of whom shall be Members of the Outer Bar who have been practising as Local Practising Barristers for less than five years; and
- (c) 13 of whom shall be either Senior Counsel or members of the Outer Bar but of whom not more than four shall be Senior Counsel,
- at the date prescribed under this Constitution for receipt by the Returning Officer of nominations for election of the Bar Council.
- 10.2.2 The persons who, immediately before the adoption of this Constitution, were members of the Bar Council shall, on adoption of this Constitution, continue to be members of the Bar Council and hold the same Office Bearer positions until the next Bar Council is declared elected.

### **10.3 Change in Qualification of Candidate for Election or Councillor**

If after the date prescribed under this Constitution for receipt by the Returning Officer of nominations for election of the Bar Council and before or after the election, a candidate for election or Councillor (as the case may be) is appointed as Senior Counsel or becomes a member of the Outer Bar who has been practising as a Local Practising Barrister for not less than five years, the candidate or Councillor does not cease to qualify as a candidate for office in the capacity in which he or she was nominated, or cease to hold office as a Councillor, by reason of his or her appointment or change in length of practice.

## **11 ELECTION OF COUNCILLORS**

### **11.1 Bar Council elections**

The Bar Council must be elected once in each Financial Year in accordance with this Constitution.

### **11.2 Eligibility to vote at an election for the Bar Council**

A Member is eligible to vote at an election for the Bar Council if the Member is an Ordinary Member - Class A or Life Member at the date prescribed for the closing of voting in the election and if the Member:

- (a) is not ineligible to vote by reason of rule 6.2.1;
- (b) is not then suspended from practice pursuant to the Act;
- (c) is not in arrears in payment of any amount payable to the Bar Council or Barristers' Benevolent Fund.

### **11.3 Nomination Procedure**

11.3.1 On or before the first Friday in October each year the Returning Officer shall send to each Member entitled to vote a notice:

- (a) specifying the dates of the opening and closing of the ballot for the forthcoming election of Councillors; and
- (b) calling for nominations of eligible Members as candidates for the forthcoming election of Councillors to be received by the Returning Officer or left at the Office not later than 4pm in the afternoon of the third Monday in October.

11.3.2 A nomination of a candidate for election must:

- (a) be in writing;
- (b) be signed by not less than two other Members eligible to vote at the election;
- (c) contain the consent of the nominated Member;
- (d) nominate an Ordinary Member - Class A who is eligible to be nominated at the time and date prescribed for receipt by the Returning Officer of nominations; and

be in the form approved by the Bar Council from time to time.

11.3.3 Members eligible to vote at the election may sign any number of nominations.

11.3.4 Members nominated for election may withdraw the nomination by notice in writing delivered to the Returning Officer at any time before the time prescribed for the closing of voting in the election.

**11.4 Election Ballot Paper**

- 11.4.1 At the expiration of the time for receiving nominations, the Returning Officer shall prepare a list containing the names of all duly nominated and eligible candidates.
- 11.4.2 Within the time prescribed by the Returning Officer for distribution of ballot papers, the Returning Officer shall send to each Member eligible to vote at the election an Election Ballot Paper.
- 11.4.3 The Election Ballot Paper shall be in the form prescribed by the Returning Officer from time to time and shall include the names of all duly nominated and eligible candidates and such other information as the Bar Council may determine and shall specify the day prescribed by the Returning Officer for the closing of voting in the election.
- 11.4.4 The Ballot Paper shall show separately Members who are Senior Counsel.
- 11.4.5 Non-receipt of a notice of election or Election Ballot Paper by any Member does not invalidate the election.

**11.5 Completion of Election Ballot Papers**

- 11.5.1 A vote is cast by a Member eligible to vote by:
- (a) placing a cross, tick or other mark opposite the names of the nominated Members on the Election Ballot Paper for whom the voting Member wishes to vote;
  - (b) placing the Election Ballot Paper in the Member's own envelope or in the envelope provided by the Returning Officer;
  - (c) if the Election Ballot Paper is placed in the Member's own envelope, placing that envelope in the envelope provided by the Returning Officer;
  - (d) legibly writing his or her name and signing his or her name on the outside of the envelope provided by the Returning Officer which carries the address to which completed ballots must be sent and sealing that envelope; and
  - (e) returning that envelope to the Returning Officer.
- 11.5.2 The envelope containing the completed ballot must be received by the Returning Officer not later than 1pm on the day prescribed for the closing of voting in the election.

**11.6 Validity of votes for Councillors**

- 11.6.1 A vote may be cast only on the Election Ballot Paper.
- 11.6.2 Any Election Ballot Paper which purports to record:
- (a) more than nine votes for Senior Counsel;
  - (b) less than five votes for Senior Counsel; or
  - (c) more than a number of votes for Members of the Outer Bar, such number being the difference between 21 and the number of votes recorded for Senior Counsel not in any event exceeding 16,
- shall be rejected in respect of the class of candidates with respect to which this rule has been infringed.
- 11.6.3 For the avoidance of doubt, if a vote must be partly rejected under rule 11.6.2, it shall nevertheless be valid for the other class or classes of candidate if the vote is otherwise valid.

11.6.4 If any Member eligible to vote in the election has any complaint in relation to the conduct of the election, the Member must notify the Returning Officer in writing of the grounds of the complaint not later than two Business Days after the declaration of the election of Councillors by the Returning Officer. The Returning Officer shall send a copy of the complaint to the three most senior members of the Bar Association willing to serve as a Committee of Disputed Returns. The conduct of that Committee shall be at the discretion of its members and the decision of the Committee shall be final.

### **11.7 Withdrawal from nomination**

If, before the time prescribed for the closing of voting in the election, any nominated Member:

- (a) withdraws the nomination;
- (b) ceases, for any reason, to be eligible to be elected to the Bar Council;
- (c) dies;

the ballot remains valid and any votes for the nominated Member shall be disregarded by the Returning Officer.

### **11.8 Declaration of election of Councillors**

11.8.1 After the ballot is closed, the Polling Officers shall count the votes cast for each candidate and shall certify the result of the count in writing to the Returning Officer indicating:

- (a) the five Senior Counsel who have received the most votes;
- (b) the three Members who have been practising as Local Practising Barristers for less than five years who have received the most votes;

and of the remaining candidates:

- (c) the 13 Members (of whom not more than four shall be Senior Counsel) who have received the most votes.

11.8.2 In the event of:

- (a) two or more Senior Counsel receiving an equal number of votes, the Member ranking highest on the order of seniority shall be deemed to have received the higher or highest number of votes;
- (b) two or more Members of the Outer Bar receiving an equal number of votes, the Member who has been a Local Practising Barrister, continuously or not, for the longest period of time shall be deemed to have received the higher or highest number of votes;
- (c) a Senior Counsel and a Member of the Outer Bar receiving an equal number of votes, the Senior Counsel shall be deemed to have received the higher or highest number of votes, subject to there not being nine Senior Counsel with a greater number of votes, in which case the member of the Outer Bar shall be deemed to have received the higher or highest number of votes.

11.8.3 The Returning Officer shall declare the elected Members by causing particulars of the declaration to be exhibited in the Office.

11.8.4 Subject to rule 11.6.4, the Returning Officer shall have the conduct of an election for the Bar Council and:

- (a) shall receive the certificate of the Polling Officers;
- (b) declare who was elected;

- (c) determine any question arising in or in relation to the election.

11.8.5 The Election Ballot Papers shall be held by the Secretary for three Business Days after the result of the election is declared and then be destroyed, unless the Bar Council determines otherwise.

## **12 COUNCILLORS**

### **12.1 Term of office of Councillors**

The Members declared elected hold office until the next Bar Council is declared elected.

### **12.2 Expenses of Councillors**

The Bar Association may pay Councillors' travelling and other expenses that they properly incur:

- (a) in attending Bar Council meetings or any meetings of committees of the Bar Association;
- (b) in attending any General Meetings of the Bar Association; and
- (c) in connection with the business of the Bar Association.

### **12.3 Removal of Councillors**

A Councillor may be removed from office by Ordinary Resolution of the Bar Association.

### **12.4 Termination of office of Councillors**

12.4.1 The office of a Councillor becomes vacant if:

- (a) the Councillor resigns that office by notice in writing to the Bar Association;
- (b) the Councillor is removed from office by operation of the Corporations Act;
- (c) the Councillor ceases to qualify as an Ordinary Member – Class A;
- (d) the Councillor ceases to be a Member;
- (e) the Councillor becomes bankrupt;
- (f) the Councillor becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health or disability;
- (g) the Councillor is absent from three consecutive meetings of the Bar Council (other than meetings of the Bar Council called on less than 48 hours' notice) without leave of absence;
- (h) the Councillor is directly or indirectly interested in any contract or proposed contract with the Bar Association and fails to declare the nature of that interest in the manner required by the Corporations Act (or at the first meeting of the Bar Council after the relevant facts have come to the Councillor's knowledge) and the Bar Council determines that the Councillor should no longer be a Councillor;
- (i) the Councillor becomes an employee of:
  - (i) the Bar Association;
  - (ii) any Related Body Corporate of the Bar Association; or

(iii) any organisation, incorporated or unincorporated, more than one-half of the controlling body of which can be elected, appointed or nominated by the Bar Association; or

(j) the Councillor is removed from office by the Ordinary Resolution of the Bar Association.

12.4.2 Nothing in rule 12.4.1 prevents a Councillor from remaining in his or her position if, during the term of office, the Councillor is appointed in an acting capacity to a judicial office or as a Royal Commissioner.

### **12.5 Casual Vacancies**

12.5.1 If any casual vacancy occurs in the Bar Council, it shall be filled by the eligible candidate willing to serve who received the next highest number of votes in their category at the preceding election of the Bar Council.

12.5.2 If the prescribed number of members of the Bar Council is not elected, the vacancy or vacancies may be filled as determined by the Bar Council.

12.5.3 A Member appointed to fill any vacancy serves from the date of appointment until the date of the next declaration of the result of the election of Councillors.

### **12.6 Leave of absence and alternate Councillors**

12.6.1 The Bar Council may appoint any Ordinary Member - Class A as an alternate Councillor for a Councillor to whom leave of absence has been granted for all or part of the period of the leave of absence.

12.6.2 An alternate Councillor shall have all the rights and duties of a Councillor for the duration of his or her appointment.

12.6.3 The Bar Council may revoke the appointment of an alternate Councillor at any time by ordinary resolution without notice.

## **13 OFFICE BEARERS OF THE BAR COUNCIL**

### **13.1 Office Bearers**

13.1.1 The Office Bearers of the Bar Council shall be:

- (a) a President;
- (b) a Senior Vice-President;
- (c) a Junior Vice-President;
- (d) a Treasurer; and
- (e) an Honorary Secretary.

13.1.2 As soon as practicable after each annual election of the Bar Council, the Bar Council shall meet to appoint elected Councillors to fill each of the Office Bearer positions.

### **13.2 Term of office of Office Bearers**

13.2.1 The term of office of an Office Bearer shall end on:

- (a) the declaration of the election of the next Bar Council;

- (b) notice of retirement or resignation from the office being given to the Bar Association;
- (c) the Office Bearer ceasing to be a Councillor for any reason;
- (d) the Office Bearer ceasing to be a Member for any reason; or
- (e) removal from office by a resolution of the Bar Council.

13.2.2 No person shall be eligible to be appointed to the office of President if the person has been appointed to that office under rule 13.1.2 in each of the two preceding calendar years.

### **13.3 Casual vacancy**

13.3.1 If the office of the President becomes vacant, until the Bar Council appoints a President, the Senior Vice-President or in the absence of the Senior Vice-President, the Junior Vice-President shall be Acting President.

13.3.2 If the office of any or all of the Senior Vice-President, Junior Vice-President, Treasurer or Honorary Secretary becomes vacant, the Bar Council shall appoint another of the Councillors to fill the vacancy as soon as practicable after the occurrence of the vacancy.

### **13.4 Absence of Office Bearers**

13.4.1 In the temporary absence of the President, the Senior Vice-President, or in the absence of the Senior Vice-President, the Junior Vice-President, shall be Acting President.

13.4.2 In the temporary absence of the President and each of the Vice-Presidents, the Bar Council shall appoint one of the Councillors Acting President.

### **13.5 Powers of Acting President**

An Acting President while acting in that capacity shall have the same powers as the President.

### **13.6 Duties of Office Bearers**

13.6.1 The President shall supervise the affairs of the Bar Association and is an ex-officio member of all committees established by the Bar Council.

13.6.2 The Treasurer shall manage the finances of the Bar Association and must report on the financial position of the Bar Association as required and attend to all other duties required by the Corporations Act and the Bar Council.

13.6.3 The Honorary Secretary shall carry out such duties as the Bar Council shall determine from time to time.

13.6.4 Without limitation to the Bar Council's power to delegate and subject to the Corporations Act, the Bar Council may delegate any function, duty or power which is expressed to be exercised by the Secretary in this Constitution to the Honorary Secretary.

## **14 POWERS AND DUTIES OF THE BAR COUNCIL**

### **14.1 Manage general business of the Bar Association**

14.1.1 The business and affairs of the Bar Association shall be managed and administered by the Bar Council.

14.1.2 The Bar Council may exercise all the powers of the Bar Association and:

- (a) do all the acts that may be done on behalf of the Bar Association; and

(b) exercise all the powers that may be exercised by the Bar Association,

which are not required to be exercised by the Bar Association in General Meeting, by the Corporations Act or by this Constitution.

14.1.3 Subject to this Constitution, the Bar Council may engage the services of any person as any employee or contractor for such term and at such remuneration and upon such conditions as it may think fit.

#### **14.2 Other Powers**

The Bar Council may exercise such other powers as may be conferred upon it by or under any legislative instrument.

#### **14.3 Power to delegate**

14.3.1 The Bar Council may delegate any of its powers (other than that of delegation) to committees appointed by the Bar Council provided that at least 75% (calculated to the nearest whole number) of the members of a committee are Ordinary Members - Class A.

14.3.2 Without limitation to the Bar Council's power to delegate and subject to the Corporations Act, the Bar Council may delegate any of its functions, duties or powers to a committee comprising the Office Bearers referred to in clause 13 of this Constitution (the Executive Committee).

14.3.3 The Bar Council may revoke any delegation of its powers by ordinary resolution.

14.3.4 Any committee exercising the delegated power of the Bar Council shall comply with any conditions or limitations imposed by the Bar Council.

#### **14.4 Appointment and duties of Executive Director**

14.4.1 The Bar Council may engage the services of any person (not being a Councillor) as an employee to assist it in the management and administration of the business and affairs of the Bar Association whose title shall be "Executive Director" or such other name as the Bar Council may determine from time to time.

14.4.2 The Bar Council may define and limit the powers and duties of the Executive Director.

14.4.3 Even though the word "director" may appear in the Executive Director's title, the Executive Director is not to be taken to be a director of the Bar Association.

14.4.4 The appointment of an Executive Director may be for such period, at such remuneration and upon such conditions as the Bar Council thinks fit.

#### **14.5 Appointment of Secretary**

14.5.1 The Bar Council must appoint at least 1 Secretary and may appoint additional secretaries.

14.5.2 The appointment of a Secretary may be for such period, at such remuneration and upon such conditions as the Bar Council thinks fit. The Bar Council may appoint the Executive Director as Secretary.

#### **14.6 Appointment of Returning Officer**

The Bar Council may appoint a Returning Officer (not being a Councillor or candidate for election) not later than one month before the Annual General Meeting. If no appointment is made, the Executive Director shall be the Returning Officer.

**14.7 Appointment of Polling Officers**

- 14.7.1 Before the date prescribed for the closing of voting in an election for the Bar Council, the Bar Council shall appoint not less than six Ordinary Members – Class A eligible to vote at the election (not being Councillors or candidates for election) to be polling officers.
- 14.7.2 In the event of a Polling Officer being unwilling or unable to act, the Bar Council, or if it is impracticable for the Bar Council to do so, the Returning Officer, shall appoint another Polling Officer to replace the Polling Officer unwilling or unable to act.
- 14.7.3 The Polling Officers shall supervise and assist in the counting of votes in an election of the Bar Council.
- 14.7.4 A minimum of two Polling Officers shall certify the result of the ballot in writing to the Returning Officer as required by rule 11.8.1.
- 14.7.5 At least one Polling Officer shall be present at any counting of votes.

**14.8 Representations by the Bar Association**

- 14.8.1 The President may make statements or express views about matters of public interest on behalf of the Bar Association. The President or the Bar Council may authorise any member or members to make statements or express such views for such period and under such conditions as the President or Bar Council sees fit.
- 14.8.2 The President or Bar Council may authorise any Member or Members to represent the Bar Association or Bar Council before any government or parliamentary or other body or committee to give evidence or make statements or express views on behalf of the Bar Association or Bar Council for such period and upon such conditions as the President or Bar Council sees fit.
- 14.8.3 Unless duly authorised to do so under this rule, no Member may make any statement or express any view which purports to be a statement or view of the Bar Association or Bar Council or having been made or expressed on behalf of or with the concurrence of the Bar Association or Bar Council.

**15 MEETINGS OF THE BAR COUNCIL****15.1 Convening a Meeting**

- 15.1.1 The President may at any time, and the Secretary shall whenever requested to do so by five or more Councillors, convene a Bar Council meeting.
- 15.1.2 Not less than 24 hours' notice of every Bar Council meeting shall be given to each Councillor either by personal telephone contact or in writing by the convenor, unless the President otherwise determines.

**15.2 Procedure at Meetings**

The Councillors may meet together to attend to business, adjourn and otherwise regulate the Bar Council meetings as they think fit and determine the quorum necessary for the transaction of business.

**15.3 Quorum**

- 15.3.1 Unless the Bar Council determines otherwise, a quorum comprises six Councillors.
- 15.3.2 Business shall not be transacted at any Bar Council meeting unless a quorum is present.

**15.4 Majority Decisions**

Questions arising at any meeting of the Bar Council shall be decided by a majority of votes. A resolution passed by a majority of Councillors shall for all purposes be deemed a determination of the Bar Council.

**15.5 Casting Vote**

In the case of an equality of votes, the Chair of the meeting shall have a second or casting vote.

**15.6 Chair**

A Bar Council meeting shall be chaired by:

- (a) the President;
- (b) if the President is not present within 15 minutes after the scheduled commencement of the meeting, or is unable or unwilling to act, the Senior Vice-President;
- (c) if the President and Senior Vice-President are absent or unable or unwilling to act, the Junior Vice-President; or
- (d) if the President, Senior Vice-President and Junior Vice-President are absent or unable or unwilling to act, a Councillor elected by the Councillors present.

**15.7 Written Resolutions**

- 15.7.1 If a majority of Councillors entitled to vote on a resolution, assent to the resolution set out in a document, the resolution is taken to be passed by the Bar Council.
- 15.7.2 Any resolution may consist of several copies of a document in identical terms, each of which has been assented to by one or more Councillors.
- 15.7.3 A Councillor may signify assent to a resolution set out in a document by signing the document or by notifying the Bar Association of the Councillor's assent in person or by post or by telephone, facsimile transmission, by e-mail or other electronic means.
- 15.7.4 Where a Councillor signifies assent to a resolution set out in a document otherwise than by signing the document, the Councillor must by way of confirmation sign the document at the next meeting of the Bar Council attended by that Councillor, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- 15.7.5 The resolution is passed when the last Councillor constituting the necessary majority signifies his or her assent to the resolution.

**15.8 Defective Appointment**

All acts done by the Bar Council or by any committee of Councillors or by any person acting as a Councillor are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be, or to act as, a Councillor, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Councillor or to be a member of the committee.

**15.9 Councillors' interests**

- 15.9.1 A Councillor who has a material personal interest in a contract or proposed contract with the Bar Association or a Related Body Corporate of the Bar Association, holds any office or owns any property such that the Councillor might have duties or interests which conflict or may conflict either directly or indirectly with the Councillor's duties or interests as a Councillor must give the other Councillors notice of the interest unless the Corporations Act says otherwise.

Note 1 See s 191 of the Corporations Act

15.9.2 The Secretary must record every declaration of interest in the minutes of the Bar Council meeting at or after which it is made.

### **15.10 Participation by interested Councillor**

15.10.1 A Councillor may not vote on or be present during the consideration by the Bar Council of any matter in which the Councillor has, directly or indirectly, a material personal interest. If a Councillor votes in contravention of this rule that Councillor's vote is not counted.

15.10.2 A Councillor who is not entitled to vote or to be present during the consideration of a matter may not be counted in any quorum required for a meeting of the Council.

15.10.3 The prohibitions in rules 15.10.1 and 15.10.2 do not apply if:

- (a) Councillors who do not have a material personal interest in the matter have at any time resolved that they are satisfied that the Councillor's interest in the matter (as specified by resolution of the Council) should not disqualify the Councillor from being present or voting on the matter; or
- (b) the interest that the Councillor has in the matter arises by reason only that the Councillor is a Member and has an interest in the matter in common with the other Members.

### **15.11 Meetings by Telephone**

15.11.1 Councillors may conduct meetings by telephone, audio-visual link up or any other technological means consented to by all Councillors provided that all Councillors are able to hear and be heard by all others attending the meeting.

15.11.2 A Councillor participating in a meeting in accordance with rule 15.11.1 is deemed to be present, including for the purposes of constituting a quorum and is entitled to vote at the meeting.

15.11.3 A meeting conducted by telephone, audio-visual link up or other technological means is to be treated as held at the place agreed upon by the Councillors provided that at least one Councillor present at the meeting was at such place for the duration of the meeting.

15.11.4 An original document, or a photocopy or facsimile copy which is in the possession of or has been seen by all Councillors attending the Bar Council meeting prior to, or at the time of that meeting may be treated as a document tabled at that meeting.

## **16 MINUTES OF MEETINGS**

### **16.1 Minutes of Meetings**

16.1.1 The Bar Council must ensure minutes of proceedings and resolutions of General Meetings, meetings of the Bar Council and the Executive Committee are recorded in books kept for the purpose, within 1 month after the relevant meeting is held.

16.1.2 The Bar Council must ensure that the Bar Association records in the minutes of a meeting in respect of each resolution in the notice of meeting:

- (a) the total number of proxy votes exercisable by all validly appointed proxies; and
- (b) how many proxy votes were for, against or abstained from the resolution or were to vote at the proxy's discretion.

16.1.3 If a poll is taken on the resolution, in addition to the information in rules 16.1.2(a) and (b), the minutes must also record the total number of votes cast on the poll, and the number of votes for, against and abstaining from the resolution.

**16.2 Minutes of resolutions passed without a meeting**

- 16.2.1 The Bar Council must ensure minutes of resolutions passed by the Bar Council (and committees of the Bar Council) without a meeting are recorded in books kept for that purpose within 1 month after the resolution is passed.

**16.3 Signing of Minutes**

- 16.3.1 The minutes of a meeting must be signed within a reasonable time by the Chair of the meeting or the Chair of the next meeting.
- 16.3.2 The minutes of the passing of a resolution without a meeting must be signed by a Councillor within a reasonable time after the resolution is passed.

**16.4 Minutes as evidence**

- 16.4.1 A minute that is recorded and signed under rules 16.1, 16.2 and 16.3 is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

**17 FINANCIAL RECORDS****17.1 Bar Association to keep financial records**

The Council must cause proper financial records to be kept in accordance with the Corporations Act.

**17.2 Where financial records to be kept**

The financial records must be kept at the Office or, subject to the Corporations Act, at such other place or places as the Bar Council thinks fit.

**17.3 Inspection of financial records**

- 17.3.1 The financial records must always be open for the inspection of Councillors.
- 17.3.2 Subject to the Corporations Act, the Council may from time to time determine at what times and places and under what conditions the financial records of the Bar Association may be open for inspection by Members.

**17.4 Annual financial reports**

The Bar Council must cause to be prepared, circulated to and laid before the Members in General Meeting, such reports and statements as are from time to time required by the Corporations Act.

**18 AUDIT****18.1 Appointment of Auditors**

Auditors of the Bar Association must be appointed and removed and their duties regulated in accordance with the Corporations Act.

**19 NOTICES****19.1 Application**

This rule 19 applies to serving a notice or document (called a “notice”) on a Member for the purposes of this Constitution, whether the expression “service”, “give”, “send” or a similar expression is used.

**19.2 How to Serve**

Subject to the rest of this rule 19, a notice may be served on a Member in any of the following ways:

- (a) by giving it to the Member;
- (b) by leaving it at the Member's address;
- (c) by post, that is, by sending it by pre-paid post addressed to the Member at the Member's address;
- (d) by fax, that is, by sending it by fax addressed to the Member at the Member's fax number;
- (e) by e-mail, that is, by sending it by e-mail to the Member at the Member's e-mail address;
- (f) where the Member has an address care of an exchange box in a document exchange of Australian Document Exchange Pty Limited, by leaving it, addressed to the Member, in that exchange box or at another exchange box for transmission to that exchange box;
- (g) in any other way the law provides for service on the Member.

**19.3 Members' addresses**

19.3.1 A Member's address is:

- (a) the address shown in the Register as the Member's address;
- (b) if the address shown in the Register as the Member's address is outside Australia – either that address or an address within Australia that the Member has notified the Bar Association is to be used for service of notices.

19.3.2 If the home address, postal address, document exchange address, electronic mail address or facsimile number of a Member changes, the Member shall promptly give notice of the change to the Bar Association.

**19.4 Sending notices by post to overseas Members**

A notice to be served by post on a Member to an address outside Australia must be sent by airmail.

**19.5 When notices sent by post received**

19.5.1 A notice sent by post to an address in Australia is taken to be received three Business Days after it is sent.

19.5.2 If sent to an address outside Australia, it is taken to be received five Business Days after it is sent.

**19.6 Members' fax numbers and e-mail addresses**

19.6.1 A Member's fax number is the number shown in the Register as the Member's fax number.

19.6.2 A Member's e-mail address is the electronic address shown in the Register as the Member's e-mail address.

19.6.3 A Member's document exchange address is the exchange box address shown in the Register as the Member's document exchange address.

**19.7 Service by fax**

19.7.1 A notice served by fax is taken not to be served unless a complete and correct transmission report is received.

19.7.2 It is taken to be received by the Member on the next Business Day.

**19.8 Service by e-mail**

19.8.1 A notice served by e-mail is taken not to be served if the computer system used to send it reports that the mail was not received or the mail is returned as not having been delivered.

19.8.2 It is taken to be received by the Member on the next Business Day.

**19.9 Service by Document Exchange**

A notice served by document exchange is taken to be received two Business Days later.

**19.10 Signature of notice**

The Bar Association may sign a notice in any way it determines.

**19.11 Counting days**

Where a specified period must elapse after giving a notice before an action may be taken, neither the day the notice is given nor the day the action is to be taken is counted in reckoning the period.

**19.12 Certificate of Councillor or Secretary**

A certificate signed by a Councillor or Secretary that a notice was given by the Bar Association as set out in the certificate is admissible as evidence, and is conclusive evidence, that the notice was so given.

**19.13 Deemed Service of Notices**

If:

- (a) the Bar Association, or an Officer, believes on reasonable grounds that a Member is not at the Member's registered address; or
- (b) on two or more consecutive occasions a notice served on the Member at that address is returned with an indication that the Member is not known at the address;

a notice may be effectively served on the Member by exhibiting it at the Bar Association's registered office for at least 48 hours.

However, this does not apply if before the end of the 48 hours, the Member gives the Bar Association notice of a new address.

**19.14 Notice of meetings**

19.14.1 Subject to the Corporations Act, a notice of a General Meeting or a meeting of the Bar Council is taken to be given on the day of dispatch.

19.14.2 The accidental failure to give a notice of meeting to a Member, Councillor or a committee member or the non-receipt of such a notice will not invalidate the proceedings of the meeting.

## **20 WINDING UP**

- 20.1.1 Every member of the Bar Association undertakes to contribute to the assets of the Bar Association, in the event of it being wound up, during the time that he/she is a member, or within one year afterwards, for payment of the debts and liabilities of the Bar Association contracted before the time at which the member ceases to be a member, and of the costs, charges and expenses of winding up the Bar Association and the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding four dollars.
- 20.1.2 If upon the winding up of the Bar Association there remains, after satisfaction of all its debts and liabilities any property, it must be given or transferred to some other institution or institutions having purposes similar in whole or in part to the purposes of the Bar Association and which prohibits the distribution of any surplus to at least the same extent as is required by this Constitution.
- 20.1.3 The institution or institutions must be nominated by special resolution of the Bar Association at the time of winding up and in default of such special resolution by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other Judge of that Court as may have or acquire jurisdiction in the matter and if and so far as effect cannot be given to this rule then to some charitable object.

## **21 INDEMNITY OF OFFICERS**

### **21.1 Indemnity for Officers**

- 21.1.1 To the extent that the Corporations Act permits and subject to this rule the Bar Association must indemnify each Officer against any liability that the Officer may incur by being an Officer or in carrying out the business or exercising the powers of the Bar Association.
- 21.1.2 Those liabilities include, without limitation:
- (a) a liability to another person (except the Bar Association or a related body corporate); and
  - (b) a liability for costs or expenses incurred by the Officer:
    - (i) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
    - (ii) in connection with an application, in relation to such a proceeding, in which the court grants relief to the Officer under the Corporations Act;
- but do not include a liability arising out of conduct that involves a lack of good faith.
- 21.1.3 The indemnity under this rule will be limited to the amount of the liability after deducting:
- (a) the amount in respect of which the person is otherwise entitled to be indemnified and is otherwise actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
  - (b) where the liability is incurred in the conduct of the business of another person or in the discharge of the duties of the Officer in relation to another person, the amount in respect of which the Officer is entitled to be indemnified and is actually indemnified out of the assets of that person.
- 21.1.4 To the maximum extent permitted by the Corporations Act, 'liability' in this rule means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind, including in particular, legal costs (calculated on a solicitor/client basis) incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.

**21.2 Former Officers**

The indemnities conferred on Officers by rule 21.1 apply in relation to each person who is at any time an Officer for all the period that person is an Officer. The person may claim on the indemnities in respect of that period even though the person is not an Officer at the time the claim is made.

**21.3 Further Indemnities**

The Bar Association may indemnify or agree to indemnify or enter into (and pay premiums on) a contract of insurance in respect of a person (whether or not that person is, or has been, an Officer) to the extent permitted by the Corporations Act. This power is not restricted by rule 21.1.

**22 APPLICATION OF BAR ASSOCIATION'S ASSETS**

**22.1** The income and property of the Bar Association shall be applied solely towards the promotion of the purposes of the Bar Association as set out in this Constitution. The Bar Association is prohibited from making any distribution to its members, whether in money, property or in any other way, of any assets belonging to the Bar Association. This does not prevent the payment in good faith of remuneration of any officers or employees of the Bar Association for services actually rendered nor prevent the payment of interest on money lent or reasonable and proper rent for premises demised or let by any member to the Bar Association.

**22.2** The Bar Association is prohibited from appointing any member of the Council of Management or Governing Body of the Bar Association to any salaried office of the Bar Association or any office of the Bar Association paid by fees and from giving any remuneration or other benefit in money or moneys worth to any member of such Council or Governing Body except repayment of out-of-pocket expenses and interest on money lent or reasonable and proper rent for premises demised or let to the Bar Association.

Note 1 s 150(1) of the Corporations Act only permits a company limited by guarantee to omit "Limited" from its name if its constitution requires the company to pursue charitable purposes only and to apply its income in promoting those purposes; prohibits the company making distributions to its members and paying fees to its directors; and requires the directors to approve all other payments the company makes to directors.

**22.3** Rule 22.2 shall not apply to any payment to any company in which such member shall not hold more than one per cent of the capital and such member shall not be bound to account for any share of profits he/she may receive in respect of such payment nor shall rules 22.1 and 22.2 apply to prevent the bona fide relieving or assisting of persons under rule 3.1.14.